

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.188 OF 2016
IN
CRIMINAL REVISION APPLICATION(ST) NO.229 OF 2016**

Rakesh Brijlal Jain & anr. .Applicants

Vs.

The State of Maharashtra & ors. .Respondents

Mr.S.Pasbola i/b. Mr.R.Arrote, Advocate, for the
Applicants

Mrs.P.P.Shinde, APP, for the Respondent No.1 –
State

Mr.S.K.Shinde, Govt. Pleader a/w. Mr.Y.M.Nakhwa,
APP, for the Respondent No.3

Mr.Gul Achhra present in person

CORAM : REVATI MOHITE DERE, J.

DATE : 22.06.2016

P.C.

. Heard learned counsel for the
Applicant, the learned APP for the Respondent
No.3 – Directorate Enforcement and the
Respondent No.2 – Gul Achhra.

2. By this Application, the Applicants
seek condonation of delay of one year and 151

days in filing the aforesaid Revision Application.

3. Learned counsel for the Applicants submits that the learned Special Judge, Mumbai was pleased to issue process in Spl.Case No.4 of 2014 as against the present Applicants under the P.M.L.A.Act vide order dated 08.08.2014. He submitted that the Applicants learnt of the said issuance of process on 24.08.2014, pursuant to which the Applicant No.1 and one Mr.Dhirendra Shukla suo motu appeared before the learned Special Judge and waived service of summons. He submitted that on 02.09.2014, the Applicants preferred Cri.W.P.No.3280 of 2014 in this Court, challenging the PMLA proceedings. He submitted that on 22.03.2016, the Petition was disposed of by the Division Bench of this Court. He submitted that thereafter on 04.04.2016, the present Application was filed. Learned counsel for the Applicants submits that the delay caused

in filing the aforesaid Revision Application is neither intentional nor deliberate but is only technical. He submitted that the Applicants were pursuing a remedy, from September, 2014 till March, 2016. He submitted that in the facts of the case, the delay be condoned and the Revision Application be heard on merits.

4. The learned APP does not dispute the aforesaid facts, that the Applicants were pursuing Cri.W.P.No.3280 of 2014 before the Division Bench.

5. Mr.Gul Achhra (Respondent No.2) appearing in person vehemently opposes the delay condonation Application. He does not dispute the fact, that the prayers sought in the Petition filed before the Division Bench and the present Revision Application are similar i.e. quashing of the PMLA proceedings and the fact that Cri.W.P.No.3280 of 2014 was filed by the

Applicant.

6. Perused the papers. It is not in dispute that process was issued by the learned Special Judge, P.M.L.A. in Spl.Case No.4 of 2014 on 08.08.2014. It is also not in dispute that on 02.09.2014, the Applicants had preferred Cri.W.P.No.3280 of 2014 seeking quashing of the PMLA proceedings. On 22.03.2016, the Division Bench was pleased to pass the following order.

“During the course of the hearing, it transpired that learned Special Judge had already passed an order below Exh.1 for issuance of process for the offence punishable under sections 3 and 4 of the Prevention of Money Laundering Act, 2002. The said order is not challenged by the petitioners. Petitioners have also not filed copy of the complaint on record. As against the order of issuance of process, petitioners may resort to appropriate remedies as permissible in law. **In case, the issue of delay in filing the petition for challenging the order of issuance of process is raised, pendency of**

this petition in this Court shall be considered as a ground for deciding the issue of delay. Petition stands disposed of."

(Emphasis supplied)

On 04.04.2016, the present Revision Application was filed. Infact, even in the order dated 22.03.2016, the Division Bench has observed that in case, the issue of delay in filing the petition for challenging the order of issuance of process is raised, pendency of Cri.W.P.No.3280 of 2014 shall be considered as a ground for deciding the issue of delay. Considering the peculiar facts, that the Applicants were pursuing Cri.W.P.No.3280 of 2014, the delay cannot be said to be intentional or deliberate, but appears to be purely technical.

7. Accordingly, in the interest of justice, the Application is allowed and delay is

condoned. The Application is disposed of.

(REVATI MOHITE DERE, J.)